



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2006 REGULAR SESSION

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HOUSE BILL NO. 337

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TUESDAY, MARCH 14, 2006

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The following bill was reported to the Senate from the House and ordered to be printed.

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TREY GRAYSON  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY Handie Adkins

AN ACT relating to the provision of telecommunications service.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO  
READ AS FOLLOWS:

*In addition to the definitions set forth in KRS 278.010 and 278.516(2), the following definitions shall apply to Sections 1 to 4 of this Act:*

*(1) "Basic local exchange service" means a retail telecommunications service consisting of a primary, single, voice-grade line provided to the premises of residential or business customers with the following features and functions only:*

*(a) Unlimited calls within the telephone utility's local exchange area;*

*(b) Dual-tone multi-frequency dialing; and*

*(c) Access to the following:*

*1. Emergency 911 telephone service;*

*2. All locally available interexchange companies;*

*3. Directory assistance;*

*4. Operator services;*

*5. Relay services; and*

*6. A standard alphabetical directory listing that includes names, addresses, and telephone numbers at no additional charge.*

*With respect to local exchange carriers, basic local exchange service also shall include any mandatory extended area service routes accessible as a local call within that exchange area on or before the effective date of this Act. Basic local exchange service does not include any features or functions other than those listed in this subsection, nor any other communications service, even if such service should include features and functions listed herein;*

*(2) "Electing utility" means a telephone utility that elects to operate under Section 3 of this Act;*

- 1 (3) "Local exchange carrier" or "LEC" has the same meaning as defined in 47  
 2 U.S.C. sec. 153(26);
- 3 (4) "Incumbent local exchange carrier" or "ILEC" has the same meaning as  
 4 defined in 47 U.S.C. sec. 251(h);
- 5 (5) "Nonbasic service" means all retail telecommunications services provided to a  
 6 residential or business customer, all arrangements with respect to those services,  
 7 and all packages of products or services; provided, however, nonbasic service  
 8 includes basic local exchange service only if the customer chooses to purchase a  
 9 package that includes basic local exchange service as a component of the  
 10 package;
- 11 (6) "Optional telephone feature" means any of those central office-based features  
 12 that were tariffed by a local exchange carrier on or before February 1, 2006, that,  
 13 where available:
- 14 (a) Are available to a line-side connection in a telephone switch;  
 15 (b) Are available on a stand-alone basis separate from a bundled offering; and  
 16 (c) Enhance the utility of basic local exchange service. The term includes but is  
 17 not limited to call forwarding, call waiting, and caller ID;
- 18 (7) "Package" means combinations of retail products or services offered whether at  
 19 a single price or with the availability of the price for one product or service  
 20 contingent on the purchase of others; and
- 21 (8) "Telephone utility" includes local exchange carriers and telecommunications  
 22 carriers as those terms are defined in 47 U.S.C. sec. 153 and any federal  
 23 regulations implementing that section, except that the definition shall not include  
 24 commercial mobile radio service providers as defined in 47 U.S.C. sec. 332 and  
 25 the Federal Communications Commission's lawful regulations promulgated  
 26 thereunder.

27 SECTION 2. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) Nothing in Sections 1 to 4 of this Act shall affect the commission's jurisdiction

3 with respect to:

4 (a) Any agreement or arrangement between or among ILECs;

5 (b) Any agreement or arrangement between or among ILECs and other local  
6 exchange carriers;

7 (c) Consumer complaints as to compliance with basic local exchange service  
8 obligations, and the quality of basic voice grade service transmission for  
9 basic and nonbasic services, consistent with accepted industry standards for  
10 telecommunications services;

11 (d) The emergency 911 telephone service as set forth in KRS 65.750 to 65.760  
12 or wireless enhanced emergency 911 systems as set forth in KRS 65.7621 to  
13 65.7643;

14 (e) Accuracy of billing for telecommunications services, in accordance with the  
15 truth-in-billing regulations prescribed by the Federal Communications  
16 Commission;

17 (f) Assessments as set forth in KRS 278.130, 278.140, and 278.150;

18 (g) Unauthorized change of telecommunications providers or "slamming"  
19 under KRS 278.535;

20 (h) Billing of telecommunications services not ordered by or on behalf of the  
21 consumer or "cramming" to the extent that such services do not comply  
22 with the truth-in-billing regulations prescribed by the Federal  
23 Communications Commission;

24 (i) The federal Universal Service Fund and Lifeline Services Program and any  
25 Kentucky state counterpart;

26 (j) Any special telephone service programs as set forth in KRS 278.547 to  
27 278.5499;

- 1       (k) Tariffs, except as expressly provided for in Sections 1 to 4 of this Act;
- 2       (l) Setting objectives for performance as to basic local exchange service; except  
 3       that the objectives shall not exceed existing commission standards or  
 4       associated penalties as of the effective date of this Act;
- 5       (m) Prohibiting price differences among retail telecommunications customers to  
 6       the extent that such differences are attributable to race, creed, color,  
 7       religion, sex or national origin; or
- 8       (n) Ensuring that a telephone utility furnishes safe, adequate, and reasonable  
 9       basic local exchange service to customers within that utility's service area.
- 10      (2) Telephone utilities operating pursuant to Sections 1 to 4 of this Act shall file with  
 11      the commission a form containing:
- 12      (a) The complete name of the telephone utility;
- 13      (b) The physical address of its principal office; and
- 14      (c) The name, title, and telephone number of the person responsible for  
 15      answering consumer complaints on behalf of the telephone utility.
- 16      (3) No telephone utility shall engage in predatory pricing as defined by the United  
 17      States Supreme Court in Brooke Group Ltd. v. Brown & Williamson Tobacco  
 18      Corp., 509 U.S. 209 (1993);
- 19      (4) Nothing in Sections 1 to 4 of this Act shall affect the alternative regulation  
 20      process for small telephone utilities as set forth in KRS 278.516.

21       SECTION 3. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO  
 22       READ AS FOLLOWS:

- 23      Any telephone utility, at its discretion and without commission approval, may elect to  
 24      adopt the price regulation plan set forth below:
- 25      (1) An election under this section shall be effective immediately upon written  
 26      notification from the electing utility to the commission. The election shall remain  
 27      effective until withdrawn by the electing utility.

- 1     (2) The rate for basic local exchange service for an electing utility, other than an  
2     electing small telephone utility as defined in KRS 278.516 shall be capped for a  
3     period of sixty (60) months from the date of the election. Subject to the limitations  
4     in Sections 1 to 4 of this Act, an electing utility may seek a rate adjustment for  
5     basic local exchange services according to the terms of regulation applicable to  
6     the basic local exchange services of any ILEC on June 30, 2006, or a previously  
7     approved or new price regulation proposal for basic service pursuant to KRS  
8     278.512. These rate adjustments may become effective on, or after the day  
9     following the end of the sixty (60) months.
- 10    (3) Electing utilities shall retain on file with the commission tariffs for basic local  
11    exchange services and intrastate switched access services. Tariffs filed in  
12    accordance with subsection (2) of this section shall be deemed valid and binding  
13    upon the effective date stated in the tariff.
- 14    (4) An electing utility's rates for intrastate switched access service shall not exceed its  
15    rates for this service that were in effect on the day prior to the date the utility filed  
16    its notice of election.
- 17    (5) The commission shall have original jurisdiction over complaints as to basic local  
18    exchange service of any electing telephone utility, except that the commission  
19    shall not have jurisdiction to set, investigate, or determine rates as to any electing  
20    telephone utility other than as set forth in this section. Upon a complaint in  
21    writing, made against any electing telephone utility by any person stating that  
22    basic local exchange service in which that complainant is directly interested is  
23    unreasonable, unsafe, insufficient, or unjustly discriminatory, or that basic local  
24    exchange service is inadequate or cannot be obtained, the commission shall  
25    proceed with or without notice, to make such investigation as it deems necessary  
26    or convenient. The commission may also make such an investigation on its own  
27    motion. No order concerning a complaint shall be entered by the commission

1 without a formal public hearing. A person may intervene in accordance with  
 2 commission administrative regulations. The commission shall fix the time and  
 3 place for the hearing and shall provide notice to the electing telephone utility and  
 4 the complainant not less than twenty (20) days in advance. The commission may  
 5 dismiss any complaint without a hearing if it decides that a hearing is not  
 6 necessary, in the public interest, or for the protection of substantial rights. The  
 7 complainant and the electing telephone utility shall be entitled to be heard in  
 8 person or by an attorney and to introduce evidence.

9 (6) An electing utility's rates, charges, earnings, and revenues shall be deemed to be  
 10 just and reasonable under KRS 278.030 and administrative regulations  
 11 promulgated thereunder upon election. Except as set forth in paragraphs (a) and  
 12 (b) of subsection (1) of Section 2 of this Act, an electing telephone utility shall be  
 13 exempt from KRS 278.190, 278.192, 278.200, 278.230(3), 278.255, 278.260,  
 14 278.270, 278.280, 278.290, and 278.300 and administrative regulations  
 15 promulgated thereunder. The utility shall also be exempt from any rules, orders,  
 16 or regulations of the commission requiring the retention or filing of financial  
 17 reports, classifications, depreciation or other schedules, or any other information  
 18 not required by the Federal Communications Commission.

19 (7) An electing small telephone utility, as defined in KRS 278.516, may withdraw  
 20 from being so regulated by providing written notice of withdrawal to the  
 21 commission.

22 (8) Under the following circumstances, any electing utility may withdraw from being  
 23 so regulated by providing written notice to the commission:

24 (a) Upon the approval pursuant to KRS 278.512 of a company-specific  
 25 alternative regulation plan; or

26 (b) Upon filing notice with the commission of its adoption of the applicable  
 27 provisions of any alternative regulation plan previously approved by the

1           commission. The adoption shall become effective upon filing of the notice.

2   (9) The rates for basic local exchange service for an electing small telephone utility  
 3       as defined in KRS 278.516 shall be capped for a period of twelve (12) months  
 4       from the date of the election. Annually thereafter, an electing small telephone  
 5       utility may not increase rates for an individual basic local exchange service by  
 6       more than the increase in the annual average of the Consumer Price Index for  
 7       all urban consumers for the most recent calendar year as published by the United  
 8       States Department of Labor, Bureau of Labor Statistics.

9       SECTION 4. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO  
 10    READ AS FOLLOWS:

11   The following provisions of this section shall apply and be enforced equally to all  
 12    telephone utilities, unless otherwise specifically stated in this section.

13   (1) Telephone utilities may file with the commission schedules or tariffs reflecting  
 14       the rates, terms, and conditions for nonbasic services that are generally available  
 15       to all subscribers qualifying for the rates, terms, and conditions. The rates, terms,  
 16       and conditions for basic and nonbasic services shall be valid upon the effective  
 17       date stated in the schedule. Tariffs for nonbasic services in effect on the effective  
 18       date of this Act shall continue to be effective as binding rates, terms, and  
 19       conditions until withdrawn or modified by the telephone utility.

20   (2) A telephone utility offering a package that includes any optional telephone  
 21       features tariffed as of February 1, 2006, shall maintain schedules or tariffs on  
 22       file with the commission for each such optional telephone feature available on a  
 23       stand-alone basis to residential customers who purchase basic local exchange  
 24       service from that telephone utility.

25   (3) Notwithstanding the terms of any adopted regulation plan or any provision of law  
 26       to the contrary, telephone utilities may provide nonbasic services pursuant to  
 27       terms and conditions provided to the customer. Telephone utilities shall not be

required to file nonbasic contracts with the commission. Telephone utilities shall permit a residential customer with nonbasic service to purchase basic local exchange service and any optional telephone feature on file in a schedule or tariff at the commission at the current rates, terms, and conditions without incurring termination charges, unless the customer has entered into an agreement containing termination charges and the customer is given thirty (30) days from receipt of the terms and conditions to cancel the agreement. If a customer cancels the agreement within thirty (30) days from receipt of the terms and conditions, termination charges are limited to the price of unreturned equipment or services, including installation, received at that point. Telephone utilities that provide services pursuant to this subsection shall provide customers with notice, as part of the terms and conditions of such services, that basic local exchange service and any optional telephone feature on file in a schedule or tariff with the commission may be purchased separately at the price posted on the company's Web site or on file with the commission.

(4) Notwithstanding any provision of law to the contrary, nonbasic services offered pursuant to the provisions of this section shall be set by the marketplace and are not governed by KRS 278.030 and administrative regulations promulgated thereunder. The nonbasic services are exempt from action or review by the commission under KRS 278.160, 278.170, 278.180, 278.190, 278.192, 278.200, 278.230(3), 278.250, 278.255, 278.260, 278.270, 278.280, 278.290, and 278.300 and administrative regulations promulgated thereunder, except as specifically stated in Sections 1 to 4 of this Act.

Section 5. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, in Sections 1 to 4 of this Act, in KRS 278.546 to 278.5462, and in KRS 278.990, unless the context otherwise requires:

(1) "Corporation" includes private, quasipublic, and public corporations, and all boards,

1 agencies, and instrumentalities thereof, associations, joint-stock companies, and  
2 business trusts;

3 (2) "Person" includes natural persons, partnerships, corporations, and two (2) or more  
4 persons having a joint or common interest;

5 (3) "Utility" means any person except, for purposes of paragraphs (a), (b), (c), (d), and  
6 (f) of this subsection, a city, who owns, controls, operates, or manages any facility  
7 used or to be used for or in connection with:

8 (a) The generation, production, transmission, or distribution of electricity to or for  
9 the public, for compensation, for lights, heat, power, or other uses;

10 (b) The production, manufacture, storage, distribution, sale, or furnishing of  
11 natural or manufactured gas, or a mixture of same, to or for the public, for  
12 compensation, for light, heat, power, or other uses;

13 (c) The transporting or conveying of gas, crude oil, or other fluid substance by  
14 pipeline to or for the public, for compensation;

15 (d) The diverting, developing, pumping, impounding, distributing, or furnishing  
16 of water to or for the public, for compensation;

17 (e) The transmission or conveyance over wire, in air, or otherwise, of any  
18 message by telephone or telegraph for the public, for compensation; or

19 (f) The collection, transmission, or treatment of sewage for the public, for  
20 compensation, if the facility is a subdivision collection, transmission, or  
21 treatment facility plant that is affixed to real property and is located in a  
22 county containing a city of the first class or is a sewage collection,  
23 transmission, or treatment facility that is affixed to real property, that is  
24 located in any other county, and that is not subject to regulation by a  
25 metropolitan sewer district or any sanitation district created pursuant to KRS  
26 Chapter 220;

27 (4) "Retail electric supplier" means any person, firm, corporation, association, or

- 1 cooperative corporation, excluding municipal corporations, engaged in the  
 2 furnishing of retail electric service;
- 3 (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS  
 4 278.017;
- 5 (6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is  
 6 being or has been substantially used to supply retail electric service and includes all  
 7 lines from the distribution substation to the electric consuming facility but does not  
 8 include any transmission facilities used primarily to transfer energy in bulk;
- 9 (7) "Retail electric service" means electric service furnished to a consumer for ultimate  
 10 consumption, but does not include wholesale electric energy furnished by an electric  
 11 supplier to another electric supplier for resale;
- 12 (8) "Electric-consuming facilities" means everything that utilizes electric energy from a  
 13 central station source;
- 14 (9) "Generation and transmission cooperative," or "G&T," means a utility formed under  
 15 KRS Chapter 279 that provides electric generation and transmission services;
- 16 (10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that  
 17 provides retail electric service;
- 18 (11) "Facility" includes all property, means, and instrumentalities owned, operated,  
 19 leased, licensed, used, furnished, or supplied for, by, or in connection with the  
 20 business of any utility;
- 21 (12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation  
 22 for service rendered or to be rendered by any utility, and any rule, regulation,  
 23 practice, act, requirement, or privilege in any way relating to such fare, toll, charge,  
 24 rental, or other compensation, and any schedule or tariff or part of a schedule or  
 25 tariff thereof;
- 26 (13) "Service" includes any practice or requirement in any way relating to the service of  
 27 any utility, including the voltage of electricity, the heat units and pressure of gas, the

1       purity, pressure, and quantity of water, and in general the quality, quantity, and  
 2       pressure of any commodity or product used or to be used for or in connection with  
 3       the business of any utility, *but does not include Voice over Internet Protocol*  
 4       *(VoIP) service*;

5       (14) "Adequate service" means having sufficient capacity to meet the maximum  
 6       estimated requirements of the customer to be served during the year following the  
 7       commencement of permanent service and to meet the maximum estimated  
 8       requirements of other actual customers to be supplied from the same lines or  
 9       facilities during such year and to assure such customers of reasonable continuity of  
 10      service;

11      (15) "Commission" means the Public Service Commission of Kentucky;

12      (16) "Commissioner" means one (1) of the members of the commission;

13      (17) "Demand-side management" means any conservation, load management, or other  
 14      utility activity intended to influence the level or pattern of customer usage or  
 15      demand, including home energy assistance programs;

16      (18) "Affiliate" means a person that controls or that is controlled by, or is under common  
 17      control with, a utility;

18      (19) "Control" means the power to direct the management or policies of a person through  
 19      ownership, by contract, or otherwise;

20      (20) "CAM" means a cost allocation manual which is an indexed compilation and  
 21      documentation of a company's cost allocation policies and related procedures;

22      (21) "Nonregulated activity" means the provision of competitive retail gas or electric  
 23      services or other products or services over which the commission exerts no  
 24      regulatory authority;

25      (22) "Nonregulated" means that which is not subject to regulation by the commission;

26      (23) "Regulated activity" means a service provided by a utility or other person, the rates  
 27      and charges of which are regulated by the commission;

1 (24) "USoA" means uniform system of accounts which is a system of accounts for public  
2 utilities established by the FERC and adopted by the commission;

3 (25) "Arm's length" means the standard of conduct under which unrelated parties, each  
4 party acting in its own best interest, would negotiate and carry out a particular  
5 transaction;

6 (26) "Subsidize" means the recovery of costs or the transfer of value from one (1) class  
7 of customer, activity, or business unit that is attributable to another;

8 (27) "Solicit" means to engage in or offer for sale a good or service, either directly or  
9 indirectly and irrespective of place or audience;

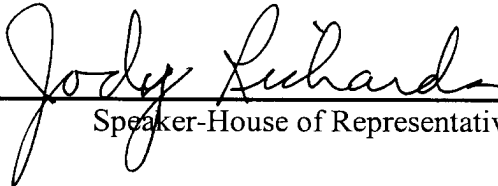
10 (28) "USDA" means the United States Department of Agriculture;

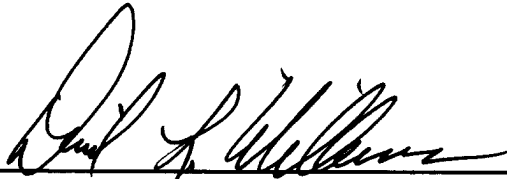
11 (29) "FERC" means the Federal Energy Regulatory Commission;

12 (30) "SEC" means the Securities and Exchange Commission;~~[-and]~~

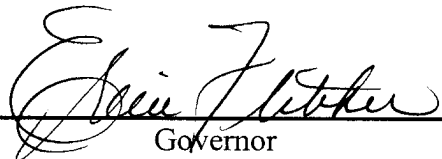
13 (31) "Commercial mobile radio services" has the same meaning as in 47 C.F.R. sec. 20.3  
14 and includes the term "wireless" and service provided by any wireless real time two  
15 (2) way voice communication device, including radio-telephone communications  
16 used in cellular telephone service, personal communications service, and the  
17 functional or competitive equivalent of a radio-telephone communications line used  
18 in cellular telephone service, a personal communications service, or a network radio  
19 access line; and

20 (32) "Voice over Internet Protocol" or "VoIP" has the same meaning as in federal  
21 law.

  
\_\_\_\_\_  
Speaker-House of Representatives

  
\_\_\_\_\_  
President of the Senate

Attest:   
\_\_\_\_\_  
Chief Clerk of House of Representatives

Approved   
\_\_\_\_\_  
Governor

Date   
\_\_\_\_\_